

REMARKS

This paper is responsive to the Non-Final Office Action dated October 9, 2003, having a shortened statutory period expiring on January 9, 2004, wherein:

Claims 27-30, 32-36, 38-43, 45-49, and 51-59 were pending in the application;

Claims 27-30, 32-36, 38-43, 45-49, and 51-59 were rejected.

No claims have been amended, canceled, or added by this amendment. Consequently, claims 27-30, 32-36, 38-43, 45-49, and 51-59 remain currently pending in the present application.

Rejection of Claims under 35 U.S.C. §103

In the present Office Action, claims 27-30, 32-36, 38-43, 45-49, and 51-59 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,195,553, issued to Claffery et al. (hereinafter "**Claffery**"). While not conceding that the Examiner's cited reference(s) qualify as prior art, but instead to expedite prosecution, Applicants have chosen to respectfully disagree and traverse the rejection as follows. Applicants reserve the right, for example, in a continuing application, to establish that one or more of the Examiner's cited references do not qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed. Applicants respectfully submit that **Claffery** fails to teach, show, or suggest a computer system comprising computer code, encoded in a computer readable medium, configured to cause a processor to, "identify pairs of said network elements as being in a first set of network element pairs;" generate a first matrix from said first set of network element pairs, "wherein...said first matrix comprises independent rows and non-independent rows;" and "measure a measured network performance metric between a first network element and a second network element of each network element pair in said second set of network element pairs" as claimed (Applicants' claim 27).

With regard to Applicants' claim 27, and the described computer code configured to cause a processor to, "identify pairs of said network elements as being in a first set of network element pairs" the Examiner references Column 5, Lines 49-61 of **Claffery** which describes elements of a communications system and the construction of a link availability matrix. While

the indicated portion *Claffery* teaches that, “Various assets are included including a ground station in New York, various satellites, A, B, C..., etc., and a ground station in Tokyo, Japan” and that a link availability matrix is constructed which includes, “the link availability intervals for each possible pairing of objects or nodes in a communications network” the Examiner’s cited portion of *Claffery* fails to teach, show, or suggest the identification of network elements or pairs of network elements as claimed. Applicants respectfully submit that the mere fact that there are assets, objects or nodes within a communications network does not teach or suggest that those, or any other elements (e.g., pairs or network elements) are “identified” as being in a first set of network element pairs as claimed.

Moreover, Applicants respectfully submit that *Claffery* teaches elsewhere (Column 5, Lines 46-48) that, “In managing the communications system, the manager or operator identifies a starting point, a destination point, and all the assets (objects or nodes) in the system.” (emphasis supplied) Applicants therefore submit that *Claffery* teaches, if anything, the identification of all objects or nodes within a network rather than, “pairs of said network elements” and that such identification is performed by a manager or operator rather than, “a processor” as claimed by Applicants (Applicants’ claim 27).

With regard to Applicants’ claim 27, and the described computer code configured to cause a processor to generate a first matrix from said first set of network element pairs, “wherein...said first matrix comprises independent rows and non-independent rows” the Examiner references Column 8, Lines 15-20 of *Claffery* (describing the construction of a link availability matrix containing link availability intervals determined by invoking various criteria including “Always,” “Never,” “Time Dependent” and a cost function) and stating that, “the independent and non-independent rows are similar to the connections “Always” and “Never” as described by *Claffery*.” (emphasis supplied) Applicants respectfully disagree and further submit that a *prima facie* case of obviousness under 35 U.S.C. §103 (requiring one or more references which teach, show, or suggest some modification or combination which would appear to be sufficient to have made Applicants’ claimed invention obvious to one of ordinary skill) is not established by teachings which are merely “similar” to elements of Applicants’ claims.

The Examiner further states within the present Office Action that, “It would have been obvious to one of ordinary skill in the art to associate the independent and non-independent rows of the instant application with the “Always”/“Never” connections. One of ordinary skill in the art would recognize those connections as the adjacent connections to the immediate node, therefore always being connected independent of the weights of other links” (emphasis supplied). Applicants respectfully disagree. As an initial matter, Applicants respectfully submit that as *Claffery* fails to teach, show, or suggest identifying pairs of network elements “as being in a first set of network element pairs” as previously shown, *Claffery* cannot possibly be construed as teaching, showing, or suggesting the generation of “a first matrix from said first set of network element pairs” as claimed (Applicants’ claim 27, emphasis supplied). Moreover, Applicants respectfully submit that it would not have been obvious to one of ordinary skill in the art at the time of Applicants’ invention to associate independent and non-independent rows of a matrix as claimed with the “Always” and/or “Never” criteria taught by *Claffery*.

Applicants submit that the availability of a link between objects in a network (or criteria invoked to determine such availability) and the proximity (i.e., whether or not the objects are “adjacent” to one another) between such objects are not necessarily related. For example, a dedicated link such as a leased line, frame relay, or the like may be provided which is “always” available irrespective of the physical distance or number of intermediary objects between a pairing of objects within a network. Similarly, links between adjacent objects of a network as taught by *Claffery* may not be “always” available due to any of a number of factors including the direction of desired transmission (see *Claffery*, Column 5, Lines 62-66 and Table 1, Column 7).

Consequently, Applicants submit that one of ordinary skill in art would not, at the time of Applicants’ invention, have made the described association (“Never” and “Always” criteria and generating a first matrix comprising “independent rows and non-independent rows”) as asserted by the Examiner in the present Office Action and that therefore *Claffery* fails to teach, show, or suggest computer code, encoded in a computer readable medium, configured to cause a processor to, “generate a first matrix from said first set of network element pairs” as claimed.

With regard to Applicants' claim 27, and the described computer code configured to cause a processor to, "measure a measured network performance metric between a first network element and a second network element of each network element pair in said second set of network element pairs" the Examiner references Column 6, Lines 22-29 of *Claffery* and further states that, "it would have been obvious to one of ordinary skill in the art to measure a network performance metric between network elements...as it would provide for better efficiency and better accuracy (see Claffery: column 6, lines 22-48)." Applicants respectfully disagree. The described portions of *Claffery* describe the construction of a cost matrix including the utilization of various weight scales on the basis of various parameters such as link distance, link quality, cost functions, link active/inactive, or the like and the analysis from the cost matrix to determine whether or not a connection is possible.

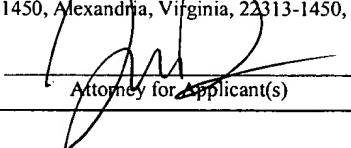
Applicants can find nothing within the cited portion of *Claffery* however which teaches, shows, or suggests the measurement of such parameters or of a "measured network performance metric" as required by Applicants' claim. Applicants respectfully submit that the mere existence of parameters such as link distance, link quality, cost functions, link active/inactive, or the like does not show or suggest that those parameters or a "measured network performance metric" are measured within the teaching of *Claffery*.

Accordingly, Applicants submit that claim 27 is allowable over *Claffery*. Applicants' claims 40, and 53 each include one or more elements or limitations substantially similar to those described with respect to claim 27. Applicants therefore respectfully submit that the described claims and all claims depending therefrom are allowable for at least those reasons stated for the allowability of that claim.

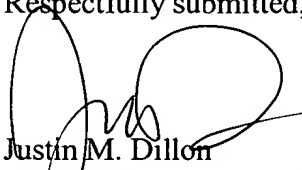
CONCLUSION

Applicant(s) submit that all claims are now in condition for allowance, and an early notice to that effect is earnestly solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is requested to telephone the undersigned.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to Commissioner for Patents, P. O. Box 1450, Alexandria, Virginia, 22313-1450, on December 31, 2003.

 12-31-03
Attorney for Applicant(s) Date of Signature

Respectfully submitted,


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